



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-570

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27039.

The Texas Department of Insurance (the "department") has received a request for "the source of the complaints brought against [the requestor's] facility or any evidence that [the] practice [alleged in the complaints] has indeed occurred." We understand that the department will release some of the requested information. However, the department believes that it may withhold, pursuant to section 552.101 of the Government Code, any information revealing "the source of the complaints." You have submitted to this office copies of the documents you believe are responsive to the request, and you have marked on the documents those portions you seek to withhold.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You cite Insurance Code article 1.10D, section 5(a) as a statutory source of confidentiality. Article 1.10D, section 5(a) provides in pertinent part as follows:

information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit is not a public record for as long as the commissioner considers reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest.

You indicate that the requested information relates to an investigation by the insurance fraud unit. You further state that withholding the requested information is reasonably necessary to serve the public interest.

In Open Records Decision No. 608 (1992) this office considered whether article 1.10D, section 5(a) of the Insurance Code deems confidential information the department's insurance fraud unit has acquired. We found, on the face of the statute, a clear legislative intent to except from public disclosure under the Open Records Act information or material relevant to an inquiry the insurance fraud unit has conducted. Open Records Decision No. 608 at 2. Moreover, the decision stated that the commissioner's decision as to whether particular information is confidential under section 5(a) controls: "If the commissioner asserts that particular, identified records must remain confidential for any or all of the three statutory reasons given -- 'to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest' -- this office is not permitted by the statute to go behind that assertion." *Id.*

Consistent with our conclusion in Open Records Decision No. 608, we here determine that the department may withhold the information revealing the source of the complaints against the requestor. Accordingly, the department need not release the information you have marked. In light of our conclusion, we need not now consider whether the informer's privilege facet of section 552.101 of the Government Code authorizes the department to withhold the information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 27039

Enclosures: Submitted documents

cc: Dr. Paul Farber
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(w/o enclosures)